

3,497 firms engaged in providing telephone service, as defined therein, for at least one year.⁸¹⁹ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."⁸²⁰ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that no more than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order. We estimate below the potential defendants affected by this order by service category.

312. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁸²¹ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.⁸²² Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies (or, all but twenty-six) were reported to have no more than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small incumbent LECs or small entities based on these employment statistics. However, because it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as "small business concerns" under the SBA's definition. Consequently, we estimate using this methodology that there are no more than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the actions taken in this *Report and Order*.

313. *Non-LEC wireline carriers.* We next estimate more precisely the number of non-LEC wireline carriers, including interexchange carriers ("IXCs"), competitive access providers ("CAPs"), Operator Service Providers ("OSPs"), Pay Telephone Operators, and resellers that may be affected by these rules. Because neither the Commission nor the SBA has developed definitions for small entities specifically applicable to these wireline service types, the closest applicable definition under the SBA rules for all these service types is for telephone communications companies other than radiotelephone (wireless) companies. However, the TRS data provides an alternative source of information regarding the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers nationwide. According to our most recent data: 130 companies reported that they are engaged in the provision of interexchange services; fifty-seven companies reported that they are engaged in the provision of competitive access services; twenty-five companies reported that they are engaged in the provision of operator services; 271 companies reported

⁸¹⁹ United States Department of Census, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("*1992 Census*").

⁸²⁰ 15 U.S.C. § 632(a)(1).

⁸²¹ *1992 Census, supra*, at Firm Size 1-123.

⁸²² 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

that they are engaged in the provision of pay telephone services; and 260 companies reported that they are engaged in the resale of telephone services and thirty reported being "other" toll carriers.⁸²³ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXC's, CAP's, OSP's, Pay Telephone Operators, and resellers that would qualify as small business concerns under SBA's definition. Firms filing *TRS Worksheets* are asked to select a single category that best describes their operation. As a result, some long distance carriers describe themselves as resellers, some as OSP's, some as "other," and some simply as IXC's. Consequently, we estimate that there are no more than 130 small entity IXC's; fifty-seven small entity CAP's; twenty-five small entity OSP's; 271 small entity pay telephone service providers; and 260 small entity providers of resale telephone service; and thirty "other" toll carriers that might be affected by the actions and rules adopted in this Report and Order.

314. *Local Exchange Carriers.* Although neither the Commission nor the SBA has developed a definition of small providers of local exchange services, we have two methodologies available to us for making these estimates. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone) as previously detailed.⁸²⁴ Our alternative method for estimation utilizes the data that we collect annually in connection with the Telecommunications Relay Service ("TRS"). This data provides us with the most reliable source of information of which we are aware regarding the number of LEC's nationwide. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.⁸²⁵ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of incumbent LEC's that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 1,347 small LEC's (including small incumbent LEC's) that may be affected by the actions taken in this *Report and Order*.

315. *Radiotelephone (Wireless) Carriers:* The SBA has developed a definition of small entities for Wireless (Radiotelephone) Carriers. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.⁸²⁶ According to the SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.⁸²⁷ The Census Bureau also reported that 1,164 of those radiotelephone companies had no more than 1,000 employees. Thus, even if all of the remaining twelve companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated,

⁸²³ *TRS Worksheet*, at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

⁸²⁴ *See supra* at para. 269.

⁸²⁵ Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (Dec. 1996) ("*TRS Worksheet*").

⁸²⁶ *1992 Census, supra*, at Firm Size 1-123.

⁸²⁷ 13 C.F.R. § 121.201, (SIC Code 4812).

and, we are unable to estimate with greater precision the number of radiotelephone carriers and service providers that would both qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 1,164 small entity radiotelephone companies that might be affected by the actions and rules adopted in this Report and Order.

316. *Cellular and Mobile Service Carriers:* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 792 companies reported that they are engaged in the provision of cellular services and 138 companies reported that they are engaged in the provision of mobile services.⁸²⁸ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 792 small entity Cellular Service Carriers and no more than 138 small entity Mobile Service Carriers that might be affected by the actions and rules adopted in this Report and Order.

317. *Broadband PCS Licensees.* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the category of radiotelephone carriers, Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 C.F.R. § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than \$40 million in the three previous calendar years. Our definition of a "small entity" in the context of broadband PCS auctions has been approved by SBA.⁸²⁹ The Commission has auctioned broadband PCS licenses in Blocks A through F. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 183 winning bidders that qualified as small entities in the Blocks C, D, E, and F auctions. Based on this information, we conclude that the number of broadband PCS licensees that might be affected by the decisions in this *Report and Order* includes, at a minimum, the 183 winning bidders that qualified as small entities in the Blocks C through F broadband PCS auctions.

4. Description of Projected Reporting, Recordkeeping and other Compliance Requirements

318. Below, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs, and we mention some of the skills needed to meet these new requirements. Overall, we anticipate that the impact of these rules will

⁸²⁸ TRS Worksheet, at Tbl. I (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

⁸²⁹ See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, Fifth Report & Order, 9 FCC Rcd 5532, 5581-84 (1994).

be beneficial to small businesses and other filers. By requiring better and more complete submissions earlier in the process, these rules will reduce the need for discovery and other information filings, thereby significantly reducing the burden on small entities.

319. *Formal Complaint Intake Form.* Section 1.721 will require all complainants to complete and submit a Formal Complaint Intake Form with their complaints.⁸³⁰ The intake form requirement is designed to help complainants avoid procedural and substantive defects that might affect the staff's ability to quickly process complaints and delay full responses by defendant carriers to otherwise legitimate complaints. In addition, the completed form will enable the staff and the defendant carriers to quickly identify the specific statutory provisions under which relief is being sought in the complaint. Because the proposed form would solicit information that would be already contained in the body of the formal complaint, no additional professional skills would be necessary to complete the form. No commenters propose alternatives to the Formal Complaint Intake Form that would both ease the burden of small businesses and accomplish the Commission's objectives.

320. *Pre-Filing Activities.* The amended rules will require a complainant to certify that it discussed the possibility of settlement with the defendant carrier's representative(s) prior to filing the complaint.⁸³¹ Although this may delay slightly a complainant's filing of a formal complaint, we conclude that this requirement will serve to settle or narrow disputes, or facilitate the compilation and exchange of relevant documentation or other information prior to the filing of a formal complaint with the Commission. No commenters propose alternatives to the pre-filing activities proposals in the *Notice* that would both ease the burden of small businesses and accomplish the Commission's objectives.

321. *Service.* The amended rules will require complainants to personally serve complaints directly on defendants or their registered agents for service of process, such that the defendant's time to answer will begin to run upon receipt of the complaint from the complainant.⁸³² Parties will be required to serve all pleadings subsequent to the complaint by hand delivery, overnight delivery, or by facsimile transmission followed by regular U.S. mail delivery.⁸³³

322. *Pleadings and Discovery.* The complaint, answer, and any authorized reply must include: (1) full statements of relevant, material facts with all such documents and affidavits that the party intends to rely on to support its claims or defenses; (2) the name and address of each individual likely to have discoverable information relevant to the disputed facts alleged in the pleadings, identifying the subjects of information; (3) a description by category and location of all documents in the possession, custody, or control of the party that are relevant to the matters in dispute; (4) an inventory of all documents and affidavits produced or identified and of all individuals identified; (5) proposed findings of fact, conclusions of law, and legal analysis.⁸³⁴ Claims based on information and belief will only be accepted if they are made in good faith and the complainant states in an affidavit why the supporting facts could not be

⁸³⁰ See Appendix A, Section 1.721(a)(12); Appendix B.

⁸³¹ See Appendix A at § 1.721(a)(8).

⁸³² See Appendix A at §§ 1.724(a); 1.735(d).

⁸³³ See Appendix A at §§ 1.735(f).

⁸³⁴ See Appendix A, § 1.721(a)(5)-(6), (10)-(11); § 1.724(b)-(c), (f)-(g); § 1.726(c)-(e).

reasonably ascertained.⁸³⁵ Amendments to complaints will be generally prohibited.⁸³⁶ The defendant must file its answer within twenty days after service of the complaint.⁸³⁷ General denials are prohibited.⁸³⁸ Replies will only be permitted to respond to affirmative defenses and failure to reply to an affirmative defense will be considered an admission of the affirmative defense.⁸³⁹ All motions to compel discovery must contain a certification that a good faith attempt to resolve the dispute was made prior to filing the motion.⁸⁴⁰ A party's failure to file an opposition to a motion may constitute grounds for granting the motion.⁸⁴¹ Oppositions to motions must be filed within five business days of the filing of the motion.⁸⁴² All pleadings that seek Commission orders, as well as the orders themselves, must contain proposed findings of fact and conclusions of law, with supporting legal analysis, and these submissions must be submitted in both hard copy and on computer disks in "read only" mode and formatted in the Commission's wordprocessing program.⁸⁴³ The parties will be required to submit a joint statement of stipulated facts, disputed facts, and key legal issues two days prior to the initial status conference.⁸⁴⁴ Briefs will be generally prohibited in cases in which no discovery is conducted and staff will have discretion to limit the scope and timing of any authorized briefs.⁸⁴⁵

323. Self-executing discovery is eliminated and all discovery requests shall be subject to staff authorization.⁸⁴⁶ The complainant must file and serve ten written interrogatory requests concurrently with its complaint and the defendant must file and serve ten written interrogatory requests by the time it serves its answer.⁸⁴⁷ The complainant will be permitted to file and serve an additional five written interrogatory requests within three calendar days following service of the answer, provided that such interrogatory requests shall only be directed at specific factual allegations made by a defendant in support of its

⁸³⁵ See Appendix A, § 1.721 (a)(5).

⁸³⁶ See Appendix A, § 1.727(h).

⁸³⁷ See Appendix A, § 1.724(a).

⁸³⁸ See Appendix A, § 1.724(b).

⁸³⁹ See Appendix A, § 1.726(a) - (b).

⁸⁴⁰ See Appendix A, § 1.727(b).

⁸⁴¹ See Appendix A, § 1.727(e).

⁸⁴² See Appendix A, § 1.727(e).

⁸⁴³ See Appendix A, § 1.727(c) - (d).

⁸⁴⁴ See Appendix A, § 1.732(h).

⁸⁴⁵ See Appendix A, § 1.732(b) - (c).

⁸⁴⁶ See Appendix A, § 1.729.

⁸⁴⁷ See Appendix A, § 1.729(a).

affirmative defenses.⁸⁴⁸ Additional "extraordinary" discovery in the form of requests for document production, depositions and additional interrogatories will be generally prohibited.⁸⁴⁹ The staff will consider the interrogatory requests propounded, issue rulings and direct the parties accordingly at the initial status conference and retain discretion to limit the scope of permissible interrogatories and modify or otherwise relax the discovery procedures in particular cases (including possible document production, depositions, and additional interrogatories).⁸⁵⁰ Staff will have discretion to require the use of scanning or other technology on an individual case basis where review of large numbers of documents is necessary.⁸⁵¹

324. *Status Conferences.* An initial status conference will take place ten business days after the filing of the answer unless otherwise ordered by the staff.⁸⁵² Prior to the initial status conference, the parties must meet and confer regarding: (1) settlement prospects; (2) discovery; (3) issues in dispute; (4) schedules for pleadings; (5) joint statements of stipulated facts, disputed facts, and key legal issues; and (6) in a Section 271(d)(6)(B) proceeding, whether the parties agree to waive the Section 271(d)(6)(B) ninety-day resolution deadline.⁸⁵³ All proposals agreed to and disputes remaining after the "meet and confer" must be reduced to writing and submitted to the staff two business days prior to the initial status conference.⁸⁵⁴ Parties must submit a joint proposed order of the rulings made in a status conference within twenty-four hours of the conference, unless otherwise directed by the staff.⁸⁵⁵ Alternatively, if an audio recording or a stenographer's transcription of a status conference is made, the parties must submit, within three business days, unless otherwise directed by the staff, and in lieu of a joint proposed order, either a transcript of such recording and a copy of the audio recording or a copy of the stenographer's transcript.⁸⁵⁶

325. These amended rules may place a greater burden on parties, including small business entities, to decide issues such as discovery within a short time frame. These rules, however, will enable the Commission to resolve many preliminary issues efficiently at the initial status conference and thereby prevent the parties from wasting resources through delay. The Commission retains the discretion to reschedule the status conference to provide more time to parties who are not under statutory deadlines.

⁸⁴⁸ See Appendix A, § 1.729(a).

⁸⁴⁹ See Appendix A, § 1.729.

⁸⁵⁰ See Appendix A, § 1.729(d), (h).

⁸⁵¹ See Appendix A, § 1.729(g).

⁸⁵² See Appendix A, § 1.733(a).

⁸⁵³ See Appendix A, § 1.733(b).

⁸⁵⁴ See Appendix A, § 1.733(b).

⁸⁵⁵ See Appendix A, § 1.733(f)(1).

⁸⁵⁶ See Appendix A, § 1.733(f)(2).

326. *Cease, Cease and Desist Orders and Other Forms of Interim Relief.* We will not delineate specific legal and evidentiary standards for issuance of cease and cease and desist orders, but will consider such requests on a case-by-case basis.⁸⁵⁷

327. In the *Notice*, in conjunction with our proposal to establish legal and evidentiary standards for issuance of cease and cease and desist orders, we had noted that some courts consider the following factors prior to issuing interim relief: (1) likelihood of success on the merits; (2) the threat of irreparable harm absent the injunction; (3) no substantial injury to other parties; and (4) the furtherance of the public interest.⁸⁵⁸ Several commenters stated that a more relaxed standard should apply, especially for resellers and small market entrants.⁸⁵⁹ We conclude that it is more appropriate to consider requests for interim or injunctive relief on a case-by-case basis. It is impossible to anticipate all of the various factual circumstances that could form the basis of a complaint. Similarly, the level and types of information necessary to sustain or defend against allegations of misconduct by carriers is likely to vary widely.

328. *Damages.* The Commission may exercise discretion to process a complaint in separate liability and damages complaints on its own motion in cases that do not involve one or more of the statutory resolution deadlines and may also encourage complainants to voluntarily separate their complaints into liability and damages complaints.⁸⁶⁰ All complaints or supplemental complaints seeking an award of damages must contain either a detailed computation of damages, including supporting documentation and materials, or an explanation why such computation is not included.⁸⁶¹ The Commission may end its adjudication of damages with the determination of the sufficiency of the damages computation method submitted by the complainant, but retain jurisdiction over the proceeding to the extent that the parties are unable to agree on an exact amount of damages by applying the mandated computation method.⁸⁶² Parties may request a fourteen day suspension of the damages proceedings, during which parties may attempt to negotiate a settlement or use ADR procedures.⁸⁶³ Staff will have discretion to require a defendant to either post a bond for or place in an escrow account the amount the Commission determines is likely to be awarded.⁸⁶⁴

⁸⁵⁷ See *supra* "Cease, Cease and Desist Orders, and Other Forms of Interim Relief" section.

⁸⁵⁸ *Notice* at 20849. See also, *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *WMATA v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

⁸⁵⁹ ICG Comments at 18-20; TRA Comments at 21; Cable Entities Reply at 14.

⁸⁶⁰ See *supra* "Damages, Bifurcation by the Commission and the Supplemental Complaint Process" section.

⁸⁶¹ See Appendix A, § 1.722(c).

⁸⁶² See Appendix A, § 1.722(e).

⁸⁶³ See Appendix A, § 1.722(d)(3).

⁸⁶⁴ See Appendix A, § 1.722(d)(2).

329. *Cross-Complaints and Counterclaims.* All counterclaims and cross-complaints will be required to be filed in separate actions.⁸⁶⁵ No commenters propose alternatives to the proposals for cross-complaints and counterclaims in the *Notice* that would both ease the burden of small businesses and accomplish the Commission's objectives. Although this rule may require small businesses to litigate certain related claims as independent actions, the existence of statutory deadlines makes this necessary. Prohibiting the introduction of counterclaims and cross-complaints late in the complaint proceeding will prevent parties from losing such claims because they did not have sufficient time during which to substantiate their claims.

330. Upon an appropriate showing of financial hardship or other public interest factors, format and content requirements shall be waived.⁸⁶⁶ In addition, the staff will retain discretion to take into account the burden of most of these new requirements on a party that is a small business entity. Finally, these rules apply only to Section 208 complaints that are filed with the Commission. Complainants wishing to assure themselves of the ability to utilize full discovery, for example, are not precluded from filing their complaints in federal district court.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

331. NAD proposes that consumers, especially *pro se* consumers with disabilities, be permitted to serve complaints by facsimile transmission or Internet.⁸⁶⁷ We have rejected NAD's proposal. We decline to authorize service by Internet at this time because we have received insufficient comments on the issue, given the significance of permitting electronic filing or service of complaint pleadings. This issue may be addressed at a later date, following implementation of procedures pursuant to our rulemaking regarding the electronic filing of documents in rulemaking proceedings.⁸⁶⁸ We reject NAD's proposal to permit service of complaints by facsimile transmission because we conclude that service of the complaint must be accomplished in the most reliable manner possible. Although we are permitting service of pleadings subsequent to the complaint to be by facsimile transmission, such service must be accompanied by mailed hard copies in the event of faulty transmission. Because we are requiring the defendant to submit its answer within twenty days of receipt of the complaint by the complainant, any delay or uncertainty in the receipt of the complaint would unduly infringe on the defendant's due process rights.

332. Some commenters suggest alternatives to the rules adopted regarding format and content and discovery. The *Notice* had proposed that information and belief allegations be prohibited. ACTA, ATSI, Bechtel & Cole, KMC, MFS, and NAD propose that complainants be permitted to submit allegations based on information and belief because some small complainants and small businesses would

⁸⁶⁵ See Appendix A, § 1.725.

⁸⁶⁶ See Appendix A, §§ 1.721(d); 1.724(j); 1.726(f).

⁸⁶⁷ NAD Reply at 5.

⁸⁶⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, Notice of Proposed Rulemaking, 12 FCC Rcd 5150 (1997).

be unable to obtain information in the possession of large defendants.⁸⁶⁹ We agreed with these commenters and the rule we adopt will permit information and belief allegations if they are made in good faith and the complainant states in an affidavit why the supporting facts could not be reasonably ascertained.⁸⁷⁰

333. ATSI proposes that different, less rigorous complaint procedures be implemented for complainants alleging violations of Section 260, pertaining to the provision of telemessaging service, because many of those complainants would be fledgling small businesses.⁸⁷¹ TRA proposes special expedited procedures for resale carrier complainants, who may be dwarfed in size and resources by their underlying network service providers.⁸⁷² For the following reasons, we decline to adopt the proposals of ATSI and TRA to establish separate complaint procedures for small business complainants. First, we conclude that having separate sets of procedures for certain types of complaints would create confusion for parties who might be unclear as to which rules to follow and might even lead to continuous and inadvertent violations of our procedural rules. Second, we conclude that separate complaint procedures would permit parties to exploit our rules by alleging certain violations in order to manipulate the time frame or level of evidentiary support required in a particular complaint. For example, a complainant alleging that a BOC has violated certain provisions of the Act might be tempted to add an allegation that the BOC has also failed to meet a condition required for approval for provision of interLATA services in violation of Section 271, in order to take advantage of the ninety-day resolution deadline mandated by Section 271(d)(6)(B).⁸⁷³ Third, to the extent that certain commenters contend that subjecting all complaints to expedited procedures will unnecessarily work hardships on complainants and defendants in cases without statutory deadlines,⁸⁷⁴ we note that the Commission will retain considerable discretion to accommodate the needs of parties in cases where no statutory deadline applies. Finally, separate sets of procedures would be administratively burdensome for the Commission. Not only would it be cumbersome to promulgate separate sets of procedures, but it would decrease staff efficiency to apply different procedural rules to different complaints.

334. Several commenters object to the complete prohibition on discovery that was mentioned in the *Notice*, on the grounds that small complainants might be unable to obtain information in the sole possession of large defendant carriers.⁸⁷⁵ We have taken these concerns into account in our rule which permits parties to submit discovery requests to be ruled upon by the initial status conference. This rule gives parties, including small businesses, an opportunity to make their cases for or against limited discovery early in the proceedings and also limits each party's ability to use discovery for delay or other

⁸⁶⁹ ACTA Comments at 4; ATSI Comments at 10; Bechtel and Cole Comments at 2; KMC Comments at 7; MFS Comments at 6; NAD Reply at 3.

⁸⁷⁰ See Appendix A, § 1.721 (a)(5).

⁸⁷¹ ATSI Comments at 9.

⁸⁷² TRA Comments at 8.

⁸⁷³ See 47 U.S.C. § 271(d)(6)(B).

⁸⁷⁴ See, e.g., APCC Comments at 7.

⁸⁷⁵ See, e.g., Bechtel and Cole Comments at 3; ICG Reply at 9; TRA Comments at 16; TCG Comments at 3.

purposes unrelated to the merits of the dispute. This abbreviation of the discovery process and subsequent expedited complaint resolution is necessary to enable the Commission to foster the pro-competitive policies of the 1996 Act by resolving promptly marketplace issues that could impede the development of competition in the telecommunications field.

335. Although these amended rules may place a greater burden on a small business entity to provide better legal and factual support early in the process, we conclude that it does not significantly alter the level of evidentiary and legal support that would be ultimately required of parties in formal complaint actions pursuant to the past rules. It may, however, make it more difficult for complainants, including small businesses, to gather the information needed to prevail on their complaints. Potentially higher initial costs may be somewhat offset by the prompt resolution of complaints and the avoidance of protracted and costly discovery proceedings and briefing requirements. It has been noted, for example, that the overall litigation costs of "rocket docket" cases in the U.S. District Court for the Eastern District of Virginia are lower than the costs of cases that take longer to resolve.⁸⁷⁶ Indeed, by requiring better and more complete submissions earlier in the process, these amended rules reduce the need for discovery and other information filings, thereby significantly reducing the burden on small business entities. Although the requirement for certification of attempted settlement of discovery disputes may delay slightly the filing of a motion to compel, we conclude that this requirement will serve to settle or narrow many discovery disputes.

336. CBT suggests that parties be permitted to attend status conferences by telephone conference call to decrease burdens and expenses for parties located outside of Washington, D.C.⁸⁷⁷ We agree and will permit parties to attend by telephone conference call.

337. No commenters propose alternatives to the damages proposals in the *Notice* that would both ease the burden of small businesses and accomplish the Commission's objectives. Although these damages rules may require small business entities to postpone litigation of damages issues, any increased costs will be somewhat offset by the prompt resolution of the liability issues in complaints and the avoidance of protracted and costly discovery proceedings and briefing requirements in the initial proceeding. Permitting parties with a settlement period during a damages phase can contribute to parties reaching a mutually satisfactory solution. The bond and escrow account requirements would only be implemented in certain situations, based upon staff consideration of several factors, including the balance of hardships between the complainant and defendant.

338. As noted, upon an appropriate showing of financial hardship or other public interest factors, format and content requirements shall be waived.⁸⁷⁸ APCC and NYNEX propose specific revenue

⁸⁷⁶ In rocket docket cases, the total litigation costs may be lower than in traditional federal litigation. Furthermore, because a preliminary injunction and damages judgment can be obtained so quickly, a complainant's market share can be preserved. George F. Pappas and Robert G. Sterne, *Patent Litigation in the Eastern District of Virginia*, 35 IDEA: J.L. & Tech. 361, 363 (1995). See also *supra* note 48.

⁸⁷⁷ CBT Comments at 13.

⁸⁷⁸ See Appendix A, §§ 1.721(d); 1.724(j); 1.726(f).

levels that would qualify a party to be eligible for a good cause waiver.⁸⁷⁹ GST, KMC, and MFS suggest having a petition in which a party must complete a "waiver" form which would contain a statement of financial hardship.⁸⁸⁰ We conclude that waiver requests shall be considered on a case-by-case-basis and should not be limited to financial hardship reasons.⁸⁸¹ Such discretion to grant waivers of the format and content requirements based on financial hardship and other public interest factors will ensure, pursuant to Section 208, that "any person" has the right to complain to the Commission about acts or omissions by a carrier that contravene the Act. For this reason, we do not agree with APCC or NYNEX that financial hardship should be determined solely based on set revenue or asset levels. The range of potential complainants under Section 208 is broad and may include individuals, state commissions, municipalities, associations, and other entities of all forms and sizes. Likewise, the size and makeup of defendant carriers will vary greatly. Thus we conclude that waiver determinations should be made on a case-by-case basis. The Commission shall make every effort to apply its discretion in a consistent and fair manner to strike an appropriate balance between strict compliance with the rules and the needs of certain parties for more lenient requirements and timetables. APCC also suggests that a party that receives a good cause waiver should also be granted relief from discovery limitations.⁸⁸² We conclude that the Commission shall have discretion to waive or modify some or all of its rules as appropriate when a waiver is granted for good cause shown.

339. MFS, GST, and USTA additionally suggest that the Commission promulgate model or form complaints or pleadings for *pro se* parties.⁸⁸³ We find that Section 1.721(b) of the rules contains a suggested format for formal complaints that is clear and explicit and that no further form complaints or model pleadings for *pro se* complainants are necessary.⁸⁸⁴ Furthermore, the Enforcement Division of the Common Carrier Bureau currently provides, via the Internet, direct mailings, and public reference room access, a fact sheet designed to instruct consumers on how to file a formal complaint with the Commission. Finally, we conclude that the range of subjects that could conceivably be contained within a pleading is too broad for a model pleading form to be of much utility to *pro se* parties.

⁸⁷⁹ APCC Comments at 6; NYNEX Comments at 8.

⁸⁸⁰ GST Comments at 8-9; KMC Comments at 9; MFS Comments at 9.

⁸⁸¹ We note that Section 1.3 of our rules states that the rules of practice and procedure may be:

suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of [Part One of the rules]. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

47 C.F.R. § 1.3.

⁸⁸² APCC Comments at 6.

⁸⁸³ MFS Comments at 9; GST Comments at 24; USTA Comments at 4.

⁸⁸⁴ 47 C.F.R. § 1.721(b)

340. Overall, we conclude that there will be a significant positive economic impact on small entity carriers that, as a result of this rulemaking, will find their complaints resolved expeditiously. The establishment of these rules of practice and procedure shall, by providing a forum for prompt resolution of complaints of unreasonable, discriminatory, or otherwise unlawful conduct by BOCs and other telecommunications carriers, will foster robust competition in all telecommunications markets.

6. Report to Congress

341. The Commission will send a copy of the *Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. § 801 (a)(1)(A). A summary of this *Report and Order* and this FRFA will also be published in the Federal Register, see 5 U.S.C. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

V. ORDERING CLAUSES

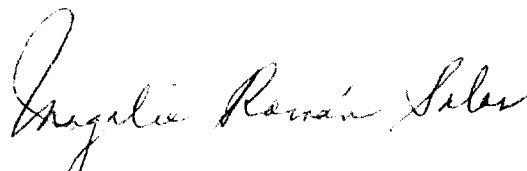
342. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4, 201-205, 208, 260, 271, 274, and 275 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 208, 260, 271, 274, and 275, the policies, rules, and requirements set forth herein ARE ADOPTED.

343. IT IS FURTHER ORDERED that 47 C.F.R. Parts 0 and 1, ARE AMENDED as set forth in Appendix A, effective thirty days after publication of the text thereof in the Federal Register.

344. IT IS FURTHER ORDERED that the Commission's Office of Public affairs SHALL SEND a copy of this *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601, *et seq.* (1981).

345. The *Report and Order* IS ADOPTED, and the requirements contained herein will become effective 70 days after publication of a summary in the Federal Register. The collection of information contained within is contingent upon approval by OMB. Notice of that approval and availability of the FCC Form 485, Formal Complaint Intake Form, will be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX A**AMENDMENT OF FORMAL COMPLAINT RULES AND PROCEDURES**
CC DOCKET NO. 96-238**TEXT OF RULE CHANGES**

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0 – COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.291 is amended by revising paragraph (d) to read as follows:

Section 0.291 Authority delegated.

* * * * *

(d) *Authority to designate for hearing.* The Chief, Common Carrier Bureau shall not have authority to designate for hearing any formal complaints which present novel questions of law or policy which cannot be resolved under outstanding precedents or guidelines. The Chief, Common Carrier Bureau shall not have authority to designate for hearing any applications except applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines.

* * * * *

PART 1 – PRACTICE AND PROCEDURE

3. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

4. Section 1.47 is amended by revising paragraphs (b) and (d), and adding new paragraph (h) to read as follows:

Section 1.47 Service of documents and proof of service.

* * * * *

(b) Where any person is required to serve any document filed with the Commission, service shall be made by that person or by his representative on or before the day on which the document is filed.

* * * * *

(d) Except in formal complaint proceedings against common carriers under §§ 1.720 - 1.736 of the rules, documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address. *See* 47 C.F.R. § 1.736.

* * * * *

(h) Every common carrier subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of said carrier in any proceeding before the Commission. Such designation shall include, for both the carrier and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. The carrier shall additionally list any other names by which it is known or under which it does business, and, if the carrier is an affiliated company, the parent, holding, or management company. Such information shall be filed with the Formal Complaints and Investigations Branch of the Common Carrier Bureau. Carriers must notify the Commission within one week of any changes in their information. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier by leaving a copy thereof with such designated agent at his office or usual place of residence. If a carrier fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

5. Section 1.720 is amended by revising the introductory paragraph and paragraph (h) and adding paragraph (j) to read as follows:

Section 1.720 General pleading requirements.

Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments. Commission proceedings may also require or permit other written submissions such as briefs, written interrogatories, and other supplementary documents or pleadings. All written submissions, both substantively and procedurally, must conform to the following standards:

* * * * *

(h) Specific reference shall be made to any tariff provision relied on in support of a claim or defense. Copies of relevant tariffs or relevant portions of tariffs that are referred to or relied upon in a complaint, answer, or other pleading shall be appended to such complaint, answer, or other pleading.

* * * * *

(j) Pleadings shall identify the name, address, telephone number, and facsimile transmission number for either the filing party's attorney or, where a party is not represented by an attorney, the filing party.

6. Section 1.721 is amended by revising subparagraphs (a)(5), (a)(6), (a)(7), (a)(8), adding paragraphs (a)(9), (a)(10), (a)(10)(i), (a)(10)(ii), (a)(10)(iii), (a)(11), (a)(12), (a)(13), (a)(14), and adding paragraphs (c) and (d) to read as follows:

Section 1.721 Format and content.

(a) * * *

(5) A complete statement of facts which, if proven true, would constitute such a violation. All material facts must be supported, pursuant to the requirements of §1.720(c) of the rules and

subparagraph (11) of this section, by relevant affidavits and documentation, including copies of relevant written agreements, offers, counter-offers, denials, or other related correspondence. The statement of facts shall include a detailed explanation of the manner and time period in which a defendant has allegedly violated the Act, Commission order, or Commission rule in question, including a full identification or description of the communications, transmissions, services, or other carrier conduct complained of and the nature of any injury allegedly sustained by the complainant. Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the plaintiff's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

(6) Proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the complaint;

(7) The relief sought, including recovery of damages and the amount of damages claimed, if known;

(8) Certification that the complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint. Such certification shall include a statement that, prior to the filing of the complaint, the complainant mailed a certified letter outlining the allegations that form the basis of the complaint it anticipated filing with the Commission to the defendant carrier that invited a response within a reasonable period of time and a brief summary of all additional steps taken to resolve the dispute prior to the filing of the formal complaint. If no additional steps were taken, such certificate shall state the reason(s) why the complainant believed such steps would be fruitless;

(9) Whether a separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or same set of facts, in whole or in part, or whether

the complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission;

(10) An information designation containing:

(i) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the complaint, along with a description of the facts within any such individual's knowledge;

(ii) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control, that are relevant to the facts alleged with particularity in the complaint. Such description shall include for each document: (A) the date it was prepared, mailed, transmitted, or otherwise disseminated; (B) the author, preparer, or other source; (C) the recipient(s) or intended recipient(s); (D) its physical location; and (E) a description of its relevance to the matters contained in the complaint; and

(iii) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(11) Copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the complaint;

(12) A completed Formal Complaint Intake Form;

(13) Verification of the filing payment required under 47 C.F.R. § 1.1105(1)(c) or (d); and

(14) A certificate of service.

* * * * *

(c) Where the complaint is filed pursuant to 47 U.S.C. § 271(d)(6)(B), the complainant shall clearly indicate whether or not it is willing to waive the ninety-day resolution deadline contained within 47 U.S.C. § 271(d)(6)(B), in accordance with the requirements of § 1.736 of the rules.

(d) The complainant may petition the staff, pursuant to § 1.3 of the rules, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

7. Section 1.722 is amended to read as follows:

Section 1.722 Damages.

(a) In a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim in accordance with the requirements of subpart (c) of this section.

(b) Damages will not be awarded upon a complaint unless specifically requested. Damages may be awarded, however, upon a supplemental complaint that complies fully with the requirement of subpart (c) of this section, based upon a finding of liability by the Commission in the original proceeding.

Provided that:

(1) If recovery of damages is first sought by supplemental complaint, such supplemental complaint must be filed within, and recovery is limited to, the statutory limitations contained in § 415 of the Communications Act;

(2) If recovery of damages is clearly and unequivocally requested in the original complaint, by identification of the claim giving rise to the damages and a general statement of the nature of the injury suffered, such claim for damages shall relate back to the filing date of the original formal complaint if:

(i) The complainant clearly states in the original complaint that it chooses to have liability and prospective relief issues resolved prior to the consideration of damages issues; and

(ii) The complainant files its supplemental complaint for damages within sixty days after public notice (as defined in § 1.4(b) of the Commission's rules) of a decision on the merits of the original complaint.

(3) Where a complainant voluntarily elects to seek the recovery of damages upon a supplemental complaint in accordance with the requirements of subpart (b)(2) of this section, the Commission will resolve the liability complaint within any applicable complaint resolution deadlines contained in the Act and defer adjudication of the damages complaint until after the liability complaint has been resolved.

(c) In all cases in which recovery of damages is sought, it shall be the responsibility of the complainant to include, within either the complaint or the supplemental complaint for damages filed in accordance with subpart (b) of this section, either:

(1) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; or

(2) An explanation of:

(i) The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(ii) Why such information is unavailable to the complaining party;

(iii) The factual basis the complainant has for believing that such evidence of damages exists;

and

(iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

(d) Where a complainant voluntarily elects to seek the recovery of damages upon a supplemental complaint in accordance with the requirements of subpart (b)(2) of this section, the following

procedures *may* apply in the event that the Commission determines that the defendant is liable based upon its review of the original complaint:

(1) Issues concerning the amount, if any, of damages may be either designated by the Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge. Such Administrative Law Judge shall be chosen in the following manner:

(i) By agreement of the parties and the Chief Administrative Law Judge; or

(ii) In the absence of such agreement, the Chief Administrative Law Judge shall designate the Administrative Law Judge.

(2) The Commission may, in its discretion, order the defendant either to post a bond for, or deposit into an interest bearing escrow account, a sum equal to the amount of damages which the Commission finds, upon preliminary investigation, is likely to be ordered after the issue of damages is fully litigated, or some lesser sum which may be appropriate, provided the Commission finds that the grant of this relief is favored on balance upon consideration of the following factors:

(i) The complainant's potential irreparable injury in the absence of such deposit;

(ii) The extent to which damages can be accurately calculated;

(iii) The balance of the hardships between the complainant and the defendant; and

(iv) Whether public interest considerations favor the posting of the bond or ordering of the deposit.

(3) The Commission may, in its discretion, suspend ongoing damages proceedings for fourteen days, to provide the parties with a time within which to pursue settlement negotiations and/or alternative dispute resolution procedures.

(e) The Commission may, in its discretion, end adjudication of damages with a determination of the sufficiency of a damages computation method or formula. No such method or formula shall contain a provision to offset any claim of the defendant against the complainant. The parties shall negotiate in

good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated method or formula. Within thirty days of the release date of the damages order, parties shall submit jointly to the Commission either:

- (1) A statement detailing the parties' agreement as to the amount of damages;
- (2) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or
- (3) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

8. Section 1.724 is amended by revising paragraphs (a), (b), and (c) and adding new paragraphs (f), (f)(1), (f)(2), (f)(3), (g), (h), (i), and (j) to read as follows:

Section 1.724 Answers.

(a) Any carrier upon which a copy of a formal complaint is served shall answer such complaint in the manner prescribed under this section within twenty days of service of the formal complaint by the complainant, unless otherwise directed by the Commission.

(b) The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint. Every effort shall be made to narrow the issues in the answer. The defendant shall state concisely its defenses to each claim asserted and shall admit or deny the averments on which the complainant relies and state in detail the basis for admitting or denying such averment. General denials are prohibited. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the defendant shall specify so much of it as is true and shall deny only the remainder. The defendant may deny the allegations of the complaint as specific denials of either designated averments or paragraphs.

(c) The answer shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the answer.

* * * * *

(f) The answer shall include an information designation containing:

(1) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the answer, along with a description of the facts within any such individual's knowledge;

(2) A description of all documents, data compilations and tangible things in the defendant's possession, custody, or control, that are relevant to the facts alleged with particularity in the answer. Such description shall include for each document: (i) the date it was prepared, mailed, transmitted, or otherwise disseminated; (ii) the author, preparer, or other source; (iii) the recipient(s) or intended recipient(s); (iv) its physical location; and (v) a description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the defendant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(g) The answer shall attach copies of all affidavits, documents, data compilations and tangible things in the defendant's possession, custody, or control, upon which the defendant relies or intends to rely to support the facts alleged and legal arguments made in the answer.

(h) The answer shall contain certification that the defendant has, in good faith, discussed or attempted to discuss, the possibility of settlement with the complainant prior to the filing of the formal complaint. Such certification shall include a brief summary of all steps taken to resolve the dispute prior

to the filing of the formal complaint. If no such steps were taken, such certificate shall state the reason(s) why the defendant believed such steps would be fruitless;

(i) Where the complaint is filed pursuant to 47 U.S.C. § 271(d)(6)(B), the defendant shall clearly indicate its willingness to waive the 90-day resolution deadline contained within 47 U.S.C. § 271(d)(6)(B), in accordance with the requirements of § 1.736 of the rules.

(j) The defendant may petition the staff, pursuant to § 1.3 of the rules, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

9. Section 1.725 is amended to read as follows:

Section 1.725 Cross-complaints and counterclaims.

Cross-complaints seeking any relief within the jurisdiction of the Commission against any carrier that is a party (complainant or defendant) to that proceeding are expressly prohibited. Any claim that might otherwise meet the requirements of a cross-complaint may be filed as a separate complaint in accordance with §§ 1.720-1.736 of the rules. For purposes of this subpart, the term "cross-complaint" shall include counterclaims.

10. Section 1.726 is amended to read as follows:

Section 1.726 Replies.

(a) Within three days after service of an answer containing affirmative defenses presented in accordance with the requirements of § 1.724(e) of the rules, a complainant may file and serve a reply containing statements of relevant, material facts that shall be responsive to only those specific factual allegations made by the defendant in support of its affirmative defenses. Replies which contain other allegations or arguments will not be accepted or considered by the Commission.

(b) Failure to reply to an affirmative defense shall be deemed an admission of such affirmative defense and of any facts supporting such affirmative defense that are not specifically contradicted in the complaint.

(c) The reply shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the reply.

(d) The reply shall include an information designation containing:

(1) The name, address and position of each individual believed to have firsthand knowledge about the facts alleged with particularity in the reply, along with a description of the facts within any such individual's knowledge.

(2) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control that are relevant to the facts alleged with particularity in the reply. Such description shall include for each document (i) the date prepared, mailed, transmitted, or otherwise disseminated; (ii) the author, preparer, or other source; (iii) the recipient(s) or intended recipient(s); (iv) its physical location; and (v) a description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(e) The reply shall attach copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the reply.

(f) The complainant may petition the staff, pursuant to § 1.3 of the rules, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

11. Section 1.727 is amended by revising paragraphs (b), (c), (d), and (e) and adding new paragraphs (g) and (h) to read as follows:

Section 1. 727 Motions.

* * * * *

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of § 1.720(c) of the rules, except for those facts of which official notice may be taken.

(c) The moving party shall provide a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly marked as a "Proposed Order." The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 1.734(d) of the rules. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(d) Oppositions to any motion shall be accompanied by a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly captioned as a "Proposed Order." The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 1.734(d) of the rules. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(e) Oppositions to motions may be filed and served within five business days after the motion is filed and served and not after. Oppositions shall be limited to the specific issues and allegations